

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CSX TRANSPORTATION, INC.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-00338 (EGS)
)	
WILLIAMS <i>et al.</i>)	
)	
Defendants.)	

**EXHIBITS TO
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
CSXT'S MOTION FOR SUMMARY JUDGMENT**

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EXHIBIT 1

TOM DAVIS, VIRGINIA,
CHAIRMAN

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CHARLES W. DENT, PENNSYLVANIA
VIRGINIA FOXX, NORTH CAROLINA

ONE HUNDRED NINTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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February 22, 2005

HENRY A. WAXMAN, CALIFORNIA,
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DISTRICT OF COLUMBIA

BERNARD SANDERS, VERMONT,
INDEPENDENT

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

In re: Finance Docket No. 34662

Dear Secretary Williams:

As Chairman of the House Committee on Government Reform with jurisdiction over the District of Columbia and federalism issues, I am writing in support of CSX Transportation, Inc.'s (CSXT) emergency petition for declaratory order that the D.C. Ordinance, "Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005," is invalid.

As you know, the Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005 (the "Act"), was recently passed by the District of Columbia City Council on February 1, 2005 and signed by Mayor Anthony A. Williams on February 15, 2005. The Act would ban transportation of hazardous materials through the District, except in cases of emergency. The Act seeks to challenge our nation's long-standing federal regulatory structure and establish a new precedent that will undermine the efficiency and efficacy of the national rail network. Accordingly, I urge you to declare the ordinance invalid.

First, the ordinance is invalid because it violates the Commerce Clause of the United States Constitution by unreasonably burdening interstate commerce. The Act would require CSX to add hundreds of miles and days of transit time to their routes, increase the number of times a car must be handled, and will increase the time cars spend in rail yards. Ironically, all of these actions carry their own security concerns and increase the risk of transporting hazardous materials. In addition, while safety and security in transportation should be our primary concern, it is also important to note that the transportation of these materials to their destination in a timely manner is critical to our daily lives, such as the delivery of chlorine for our drinking water systems. These consequences make clear that the District of Columbia's Ordinance unreasonably burdens interstate commerce.

Mr. Vernon A. Williams

February 22, 2005

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Second, Congress has made it abundantly clear that regulation of interstate transportation of hazardous materials by railroad is exclusively the subject of federal regulation through enactment of at least three federal statutes: the Federal Railroad Safety Act, the federal Hazardous Materials Transportation Act, and Section 10501 of the Interstate Commerce Commission Termination Act (ICCTA). With the passage of the Federal Railroad Safety Act (P.L. 103-272), Congress stated "Laws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable." Furthermore, the Federal Hazardous Materials Transportation Act provides for federal preemption of a requirement of a State, political subdivision of a State, or Indian tribe relating to the transportation of hazardous materials. Finally, Congress provides the Surface Transportation Board with jurisdiction over interstate transportation. As you can see, the intent of Congress is clear that the federal government is the exclusive authority on this issue.

As the Chairman of the Committee on Government Reform, I have worked with the relevant federal officials, city officials, and private industry to ensure that necessary actions are taken to secure this important and sensitive rail corridor. While I share the concerns of the Council regarding the safety and security of their citizens and I understand that security plans and measures must be flexible and always take into account local issues and vulnerabilities specific to the region, the regulation of rail transportation is squarely within the jurisdiction of the federal government.

To this end, CSX has been working with and continues to work with the Department of Homeland Security and the Department of Transportation in hardening the D.C. rail corridor, specifically to address security issues surrounding the movement of bulk hazardous materials. This plan utilizes national initiatives for rail security as well as taking into account the unique security needs and considerations specific to the National Capital Region. Appropriately, the federal government is leading the response to this important federal issue.

For all the foregoing reasons, I ask the Surface Transportation Board to declare the Ordinance invalid.

Sincerely,



Tom Davis
Chairman

cc: The Honorable Henry A. Waxman
Minority Ranking Member

The Honorable Eleanor Holmes Norton

EXHIBIT 2

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
CHAIRMAN, SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS
AND EMERGENCY MANAGEMENT
COMMITTEE ON
GOVERNMENT REFORM



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FINANCIAL SERVICES
VICE CHAIRMAN, SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND
CONSUMER CREDIT
COMMITTEE ON
STANDARDS OF OFFICIAL
CONDUCT

Steven C. LaCourrette
Congress of the United States
14th District, Ohio

February 23, 2005

The Honorable W. Douglas Buttrey
Vice-Chairman
Surface Transportation Board
1925 K Street, NW
Suite 840
Washington, DC 20423

Dear Vice-Chairman Buttrey:

As Chairman of the U.S. House of Representatives, Subcommittee on Railroads, I am writing to express my deep concern regarding the Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005 (the "Act"), passed by the D.C. City Council on February 1, 2005. The Act would ban transportation through a "Capitol Exclusion Zone" of certain quantities of hazardous materials defined in the Act, as well as empty freight cars carrying only residues of those materials, except in cases of emergency. It is my strong belief that the D.C. City Council's legislation is preempted by federal law and places an unreasonable burden on interstate commerce. I urge the Surface Transportation Board to issue an order to that effect.

The D.C. City Council has no authority to act in the hazardous materials transportation arena. The Federal Railroad Administration has jurisdiction over rail safety. The Research and Special Projects Administration (RSPA), now to be called the Pipeline and Hazardous Materials Safety Administration (PHMSA), as prescribed in the Hazardous Materials Transportation Act, regulates the transportation of hazardous materials. The Department of Homeland Security has jurisdiction over the security of the nation's transportation modes, and has worked closely with CSXT in further hardening the D.C. rail corridor. And, as Courts and your agency have recognized, the ICCTA's preemption provision is "clear and broad," and precludes "all state efforts to regulate rail transportation." Further, the District of Columbia is violating the Home Rule Act by enacting legislation that affects conduct outside the city limits.

CSXT faces serious and practical difficulties in implementing the Act, both in the short term and the long term. Although the District of Columbia has indicated it will not immediately enforce this legislation, CSXT will have to spend considerable time and expense devising alternative route plans for merchandise trains carrying hazardous materials as well the empty tanker cars. It is entirely possible that CSXT will have to

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stop all merchandise trains while it attempts to sort out which cars need to avoid the District of Columbia, and which ones are allowed to go through. If the freight trains have to stop, Amtrak, MARC and VRE services will be seriously affected as well. These passenger services operate over CSXT lines.

Shippers and their customers will also be immediately injured when these critical materials stop in transit. The need to switch these cars, hold them in yards, and reroute them via other trains will disrupt their supply-chain logistics. It is impossible to predict how many customers will run out of inventory as a consequence.

On a long-term basis, there is no question that the Act would greatly increase the transportation burden associated with moving the materials, and shift that burden to other jurisdictions, including my own hometown of Cleveland, OH. If CSXT is forced to re-route around the District of Columbia, trains carrying hazardous materials, going both North and South will go through Cleveland and other cities in Ohio, essentially doubling the hazardous materials traffic that goes through my district, and shifting the risk that the District of Columbia claims to its citizens, to the citizens of Ohio. Rerouting trains away from the District of Columbia adds hundreds of miles and days of transit time to the transportation of the materials. Alternative routings increase the number of times a car must be handled and the time a car sits in a yard. Longer distance and transit times and increased handlings and "dwell" times are factors that tend to decrease safety and security.

For all the forgoing reasons, I ask your agency to declare the Act preempted by federal law.

Please place a copy of this letter in the public docket of this proceeding.

Sincerely,

A handwritten signature in dark ink, appearing to read "S. C. LaTourette", written in a cursive style.

Steven C. LaTourette
Chairman
Subcommittee on Railroads

EXHIBIT 3

Congress of the United States
Washington, DC 20515

February 17, 2005

The Honorable Roger Nober
Chair, Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Dear Chairman Nober:

D.C. Mayor Anthony Williams signed a D.C. Ordinance, entitled the Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005. This Act would make it illegal for trains and trucks to transport certain classes of commodities, including explosives, flammable gasses, poisonous gases, or poisonous materials within a 2.2 mile "Capitol Exclusion Zone."

I urge the Surface Transportation Board (STB) to issue an order declaring that this Act is preempted by Federal statute and that, subject to compliance with applicable federal safety and hazardous materials transportation laws and regulations, CSX Transportation (CSXT) may continue to route cars covered by the D.C. Ordinance via its lines through, and in the vicinity of, the District of Columbia.

Under Section 10501(b) of Title 49 United States Code, the STB has exclusive jurisdiction over transportation by rail carriers, including rail routes and service. Moreover, the section states: "...the remedies provided under this part with respect to regulation of rail transportation [including remedies with respect to routes] are exclusive and preempt the remedies provided under Federal or State law." There is no question that, under this statute, the D.C. Ordinance constitutes an impermissible attempt to regulate rail transportation by placing a direct restriction on the movement of CSXT rail traffic through Washington, D.C. and dictating what commodities can be carried over CSXT's lines.

The D.C. Council, in passing this legislation, also circumvented the authority of the STB to issue temporary orders directing the routing of rail traffic in response to emergency situations. The D.C. Council has not sought, and the STB has not issued, any order finding that such an emergency requires CSXT to divert hazardous material shipments to lines outside D.C., or that CSXT's routing must be restricted. Had the D.C. Council sought such an order, the Council would have learned that CSXT is already voluntarily rerouting certain rail cars containing hazardous materials, and that the Transportation Security Administration is in the process of implementing a \$7 million long-term plan to improve security on the D.C. Rail Corridor.

The D.C. Ordinance would cause great inefficiencies and hardship on CSXT's rail network while creating little additional security. The immediate impact is significant: CSXT cannot simply "flip a switch" and comply with the D.C. Ordinance immediately without stopping all merchandise trains and attempting to make alternative route plans for their cars. The closest alternative routing

available to CSX would be its line running west of the Appalachian Mountains through Tennessee, Kentucky, and Ohio. The closest alternative east-west route to the north is a line that runs from Albany, New York, to Buffalo, New York, and along Lake Erie through Cleveland, Ohio. The closest alternative east-west route to the south is CSX's line from Richmond, Virginia, to Charleston, West Virginia, and points west.

Diversion of hazardous materials to these routings would severely impair the efficiency of CSX's rail service to hazmat shippers. For example, CSX currently handles certain shipments originating in Mount Holly, NC, that are destined to Claymont, DE. Under CSX's current efficient Operating Plan, this traffic moves up the I-95 corridor via Rocky Mount, NC—Richmond, VA—Washington, D.C.—Philadelphia, PA—Stoney Creek, PA to Claymont, DE. The current route is 754 miles long. According to CSX, in order to avoid D.C., this traffic would have to move via Erwin, TN—Cincinnati, OH—Cleveland, OH—Buffalo, NY—Syracuse, NY—Albany, NY—Oak Island, NJ—Philadelphia, PA—Stoney Creek, PA to Claymont, DE. This alternative route is 1,655 miles long, or more than double the current routing.

If freight trains have to stop, Amtrak, MARC, and VRE commuters will feel the immediate impact, as these passenger trains operate over CSXT lines. Millions of commuters – many of which have no other means of transportation – rely on this service on a daily basis.

Shippers and their customers will also be impacted when critical materials stop in transit. Diversion of the shipments, for the sole purpose of avoiding D.C., would generate an additional 1.9 million car miles, and an additional 6,500 car handlings per year. The greater number of car handlings would increase the amount of "dwell time" spent in yards en route, imposing substantial additional costs on shippers and users of the commodities, and jeopardizing safety and security/

For all the forgoing reasons, I ask the STB to declare the DC Ordinance preempted by federal law.

Sincerely,



Corrine Brown
Member of Congress

Cc: The Honorable Douglas Buttrely
The Honorable Frank Mulvey

EXHIBIT 4

Date March 02, 2005
Time 06:00 AM - 07:00 AM
Station WTOP-AM (CBS) Frequency 1500
Location Washington
Program News

DAVE ROSS, anchor:

As the debate over a new law in DC restricting the transportation of hazardous cargo moves to federal court, the man responsible for keeping the Capitol safe tells WTOP he sees no need for the legislation.

MARK SEAGRAVES reporting:

Capitol Police Chief Terry Gainer is part of the four-man Capitol Police Board, the little-known but very powerful committee made up of Gainer, the architect of the Capitol and the sergeant of arms (sic) for the House and the Senate. They have the power to close streets and restrict access around the Capitol. So could they halt the trains carrying the hazmat cargo?

Chief TERRY GAINER (Washington, DC Police):

Interesting legal question; I don't know that I can answer. Fortunately, push hasn't come to shove, so we've worked out what our needs are and how they conduct their business.

SEAGRAVES:

Gainer says, as a District resident, he understands the concerns, but as the man in charge of Capitol security, he's satisfied with precautions CSX Transportation has taken.

Mark Seagraves, WTOP RADIO.

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EXHIBIT 5

BYRON A. BOYD, JR.
International President

PAUL C. THOMPSON
Assistant President

DAN E. JOHNSON
General Secretary and Treasurer

J. M. BRUNKENHOEFER
National Legislative Director



WASHINGTON OFFICE
NATIONAL LEGISLATIVE DEPARTMENT



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**Testimony of James Stem
DC City Council Committee
January 23, 2004**

My name is James Stem. I appear today as a representative of the United Transportation Union. I serve as the Alternate National Legislative Director and our offices are located at 304 Pennsylvania Avenue, SE here in DC. We represent tens of thousands of union employees who operate the trains, including many employees who live and work in the District of Columbia.

I sincerely appreciate the opportunity to speak today and share our viewpoint with you while you are considering this important transportation issue.

The safest way to move the many chemicals that our society requires in supporting our lifestyles is by rail. Moving chemicals that are classified as hazardous materials from the manufacturer to the consumer is much safer on our railroads than on our highways. The rail containers that these materials are loaded in are very secure and built to much higher standards than their trucking counterparts.

The rail employees that we represent are highly trained professionals that are prepared to move their trains safely from one location to another. If our workers, who are operating the trains and closest to the potential risk, thought that the movement of these goods was not safe, I would be lobbying in Congress to regulate these shipments today instead of appearing here. Safety is the top priority in our industry and of the United Transportation Union.

Washington, DC is part of major transportation corridors for highways, freight railroads, and passenger railroads. The rail lines that pass through DC have historically provided a link from the northeast to all points in the south. A requirement for diversion of certain commodities will compromise the safety of the rail operations and the rail crews.

Any diversion of traffic that is considered will require additional physical switching of the rail cars involved, more exposure to our employees, and new opportunities for terrorists to strike while these trains are standing still setting the diverted traffic out of the consist.

After the September 11 attacks, labor participated with the rail industry, the FBI, and the US Department of Transportation to review and update all hazmat security requirements. Minor improvements were made to the security protocols, and they have been working well for all the communities that our industry serves. That focus on security will continue and we will continue to be a part of it. I am concerned that a local ordinance anywhere that requires diversion of traffic will weaken the national standards that are working well for all of us today. In addition, as someone representing tens of thousands of railroad employees across the nation, as a simple matter of fairness, I don't believe that any one locality should push a problem into someone else's backyard. This is a national issue and we should be working together, with the continued support and cooperation of federal and local officials, to deal with this issue on a national basis.

I am not advertising for the rail industry today, but we consider the level of hazmat shipments in our industry to be directly related to the excellent safety record that railroads have produced over many years. Rail hazmat shipments are 14 times safer than shipping by truck on our highways. I would also like to state that the professionalism of our operating employees is also directly involved in these safety statistics.

My last concern that I would like to identify for your consideration is the loss of jobs in the local area that any diversion of traffic will represent. I am proud to stand before you today and say that railroad jobs are good jobs held by people who take pride in working safely and securely. We would like to see more local jobs in DC, not less. Because of the delays that would accompany any re-routing system, it is almost certain that some of these movements would shift to trucks, which in addition to being less safe, would also cost the working men and women of the railroad jobs in the long run.

I will be glad to answer any questions. I appreciate the opportunity to speak with you today.

James Stern
Alternate National Legislative Director
United Transportation Union
304 Pennsylvania Avenue, SE
Washington, DC 20003-1130
(202) 543-7714
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EXHIBIT 6

February 17, 2005

City Council Passes Resolution to hold Investigative Hearings into CSX Railroad's Operations in Philadelphia

RESOLUTION

Authorizing City Council's Committee on Transportation and Public Utilities to hold public hearings to investigate the operations of CSX Transportation [CSXT] in and around the City of Philadelphia and their impact on the public health, safety and welfare of the residents of Philadelphia, and authorizing the issuance of subpoenas by the chair of the committee to compel the attendance of witnesses and the production of documents to the full extent authorized under Section 2-401 of the Home Rule Charter.

WHEREAS, This Council, by Resolution No. 041090 (adopted on December 16, 2004), has publicly deplored the efforts by CSXT to deprive Philadelphians of public access to one of the City's treasures, the Schuylkill River Park and its trails through a misguided lawsuit and also deplored CSXT's contempt for the City as demonstrated by its refusal to promptly and appropriately repair its structural supports and bridge over 25th Street and by its practice of parking trains filled with noxious garbage along side the Fitler Square neighborhood; and

WHEREAS, CSXT transports extremely toxic chemicals throughout its rail network in the Northeast, including on tracks through the City of Philadelphia, placing the residents of Philadelphia at grave peril. Just last month, a train derailment ruptured a Norfolk Southern tank car and unleashed a choking cloud of caustic chlorine gas near the small town of Graniteville, S.C., killing nine people and injuring 250; and

WHEREAS, Terrorists targeting train cars carrying hazardous cargos could turn CSXT trains into weapons of mass destruction, leading to the death of 100,000 Philadelphia residents within a half an hour; and

WHEREAS, Washington DC has recently passed legislation prohibiting CSXT from transporting hazardous materials through the downtown areas of the District of Columbia in an effort to protect the nation's capital from terrorism; now therefore be it

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That the Committee on Transportation and Public Utilities is hereby authorized to hold public hearings to investigate the operations of CSXT Transportation in and around the City of Philadelphia and their impact on the public health, safety and

welfare of the residents of Philadelphia, and authorizes the issuance of subpoenas by the chair of the committee to compel the attendance of witnesses and the production of documents to the full extent authorized under Section 2-401 of the Home Rule Charter.

Council President Anna C. Verna

Councilman Darrel L. Clarke
Councilman Jack Kelly
Councilman Michael A. Nutter